

Public Hearing
On
Bill 13-471, the “Tax Expenditure Budget Review Act of 1999”

Before
The Committee on Finance and Revenue
Jack Evans, Chair
Council of the District of Columbia



Testimony of Julia Friedman
Director, Tax and Economic Policy Administration
Office of Tax and Revenue

Office of the Chief Financial Officer
Valerie Holt
Chief Financial Officer

February 4, 1999
10:00 A.M., Council Chambers

Good morning Mr. Chairman, Members of the Committee and staff. My name is Julia Friedman and I am the Director of the Tax and Economic Policy Administration of the Office of Tax and Revenue (OTR). I am here to testify on behalf of OTR. With me today is Greg Matson, Acting Chief Tax Counsel for OTR. I appreciate the opportunity to provide testimony with respect to Bill 13-497, the Estate Tax Technical Amendment Act of 1999.

This bill eliminates unintended estate taxes on the estates of trustees. Currently, if a trustee is deemed to have general power of appointment over trust assets, then the entire trust will be subject to tax as part of the trustee's estate. The problem concerns the meaning of "general power of appointment." If the power is limited to "health, education, maintenance and support" then the power is not general and the trust does not incur estate tax liabilities. On the other hand, if additional language is used in the creation of trusts that generally provide for the "care, comfort or support" of the trustee, then the assets of the trust may be subject to taxation. The purpose of this bill is to ensure that poorly drafted trusts are not made subject to the estate taxation. It should be noted that Maryland and Virginia have passed similar legislation.

The issue that has arisen federally is whether trusts that are intended to be limited in scope have inadvertently been drafted to include language that fails to hold the trustee to some ascertainable standard in making discretionary distributions relating to the trustee's health, education, support and maintenance, as provided in the federal tax code. This bill would statutorily limit such trusts to an ascertainable standard established, unless drafters specifically and intentionally opt out of the statute's application. Thus, the bill would protect District estates from inartfully drafted trust instruments that violate the federal standard for trustee powers. The District's own estate tax is based entirely on operation of the federal estate tax laws, and therefore the bill would protect the same estates from inadvertent District taxation as well.

OCFO Recommendation

The Office of the Chief Financial Officer (OCFO) recommends passage of the proposed bill. This bill will serve the citizens of the District of Columbia in that they will be protected from potential drafting errors in their trust documents that could have the unforeseen result of subjecting their trusts to federal and District estate taxes. OCFO notes that the bill has the effect of

amending pre-existing trusts, with a provision for trustees to opt out of the bill's coverage. Section (e)(2)(B) of the bill may place an unintended burden on attorneys who have previously drafted trust documents in that they may have an obligation to inform the parties effected by the bill of the election to opt out of the bill's requirements.

My colleague and I would be happy to answer any questions you have regarding the Estate Tax Technical Amendment Act of 1999. Thank you.